

EXCLUSIVE NEGOTIATION AGREEMENT
By and Between
IMPERIAL BEACH REDEVELOPMENT AGENCY
And
SADBERRY PROPERTIES, INC.

THIS EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is entered into this ____ day of _____ 2009 ("Effective Date"), by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency"), and SADBERRY PROPERTIES, INC., a California corporation (the "Developer"), on the terms and provisions set forth below. The Agency and Developer may sometimes be referred to herein individually as "Party" and collectively as "Parties."

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

I. [§ 100] Negotiation

A. [§ 101] Good Faith Negotiations

The Agency and the Developer agree for the period set forth below in Section 102 to negotiate diligently and in good faith to prepare a Disposition and Development Agreement ("DDA") to be entered into between the Agency and the Developer with respect to that area in the Palm/Commercial Redevelopment Project which is shown on the Site Map attached hereto as Exhibit "A," hereinafter referred to as the "Site." The Site is a block bounded by westerly boundary of the parcel commonly known as the North Island Credit Union and 9th street, State Route 75/Palm Avenue, and a public alley, in the City of Imperial Beach.

The obligation to negotiate in good faith requires the respective Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone conversations, and correspondence. The Parties understand that final accord on all issues may not be reached.

The site area is approximately 169,884 square feet ("Site Area"). During the term of this Agreement, the Developer, at its sole expense, shall determine the exact square footage of the Site during the Site's planning activities outlined below. Agency shall provide reasonable cooperative assistance to Developer, as determined in the reasonable discretion of the Agency's Executive Director.

The Agency anticipates that following execution of this Agreement, and through the period of negotiation and preparation of the DDA, the Agency, as well as certain consultants and attorneys for the Agency, will devote substantial time and effort in reviewing documents, proposals, plans, and meeting with the Developer, each other, and other necessary third parties. The Agency acknowledges that the Developer will

also expend substantial time and resources hereunder and the Parties are willing to engage in these activities subject to the terms and conditions set forth in this Agreement.

B. [§ 102] Period of Negotiations

The Negotiation Period (“Negotiation Period”) shall commence upon the date the Agency approves and executes this Agreement (the “Effective Date”) and continue for 180 days (“Initial Negotiation Period”), as that date may be extended as provided for herein. The Parties agree to negotiate in good faith and conduct due diligence activities during the Negotiation Period and any extension thereof. If a DDA has not yet been executed, upon the termination of the Initial Negotiation Period, this Agreement may be extended for 90 days by the written consent of the Developer and the Agency’s Executive Director to enable the Agency to (1) determine whether it desires to enter into such DDA and (2) take the actions necessary to authorize the Agency to sign the DDA if the Agency desires to enter into such DDA.

If the Agency has not signed the DDA by the expiration of the Negotiation Period (as the Negotiation Period may be extended by operation of the preceding paragraph), then this Agreement shall automatically terminate, unless the Agency, in its sole discretion, agrees in writing to an extension.

The duration of the Negotiation Period shall be extended by the duration of any “Event of Force Majeure” that may occur from time to time during the term hereof. The term “Event of Force Majeure” shall mean any and all acts of God, strikes, lock-outs, other industrial disturbances, acts of the public enemy, laws, rules and regulations of governmental entities, wars or warlike action (whether actual, impending, or expected and whether de jure or de facto), insurrections, riots, vandalism, terrorism, epidemics, inclement weather, fire or other casualty, civil disturbances, confiscation or seizure by any government or public authority, lawsuits brought by third parties, governmental or administrative action, inaction or omission, or any other causes, whether the kind herein enumerated or otherwise, that are not reasonably within the control of or caused by the party claiming the right to delay the performance on account of such occurrence; provided, however, in no circumstances shall the monetary inability of a party to perform any covenant, agreement or other obligation contained in this Agreement be construed to be an Event of Force Majeure. Upon either party hereto becoming aware of an Event of Force Majeure, it shall promptly notify the other party hereof of such occurrence.

C. [§ 103] Negotiation Deposit

Developer shall tender to Agency no later than fifteen (15) days after the Effective Date, and Agency shall accept, a deposit (“Negotiation Deposit”) in the amount of Twenty-Five Thousand Dollars (\$25,000), in the form of a cashier or certified check, or wire transfer, payable to the Agency. Developer agrees that Agency may use the Negotiation Deposit to reimburse itself for its Third Party Negotiation Costs after the

date of this Agreement for costs such as, but not limited to: outside attorneys' fees, appraisers, title reports and other third party costs as needed to complete negotiations.

The Agency shall submit to Developer invoices detailing the Agency Third Party Development Costs. The Agency shall be free to withdraw funds from the Negotiation Deposit, as needed, provided that it has submitted such invoices to the Developer and those invoices are solely for Agency Third Party Negotiation Costs. The Agency shall submit to the Developer prospective costs in excess of the Negotiation Deposit for approval by the Developer. If the Developer fails to approve such costs in excess of the Negotiation Deposit within ten (10) days of submission of said costs by the Agency, this Agreement shall terminate. The Negotiation Deposit, less the Third Party Negotiation Costs, shall be refundable to Developer in the event this Agreement is terminated prior to the execution of a DDA. In the event a DDA is fully executed and approved by all requisite action, the balance of the Negotiation Deposit, if any, shall be either returned to Developer or applied as a credit against amounts, if any, to be paid by Developer to Agency pursuant to the DDA. Should the Third Party Negotiation Costs exceed the amount of the Negotiation Deposit, Agency shall submit to Developer a reimbursement notice along with written evidence of such additional Third Party Negotiation Costs. Within Thirty (30) days of the receipt of a reimbursement notice and evidence of additional Third Party Negotiation Costs, Developer shall reimburse Agency for such Third Party Negotiation Costs.

D. [§ 104] Agency's Remedies for Breach

In the event that the Developer fails to perform any obligation herein, or in the event that the Agency reasonably believes that the Developer is not negotiating diligently and in good faith, the Agency shall provide written notice of such breach to the Developer. Developer then shall have ten (10) days, after receipt of such written notice, within which to remedy such breach unless additional time is needed to remedy the breach, in which event Developer shall commence the cure of the breach within the ten (10) day period and thereafter diligently pursue the cure to completion.

If the Developer fails to remedy such breach in a timely and reasonable manner within the above period, the Developer and the Agency agree that the Agency's sole and exclusive remedy for a Developer breach shall be to deduct Third Party Negotiation Costs incurred as of the date of the breach from the Negotiation Deposit and all remaining amounts of the Negotiation Deposit shall be refunded to Developer. Should the Third Party Negotiation Costs exceed the Negotiation Deposit, the Agency shall be entitled to receive from Developer and Developer shall pay Third Party Negotiated and approved costs within 15 days, in accordance with Section 103, costs. By initialing this provision in the spaces below, Agency and Developer each specifically affirm their respective agreement contained in this Section 104.

_____ DEVELOPER'S INITIALS	_____ AGENCY'S INITIALS
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II. [§ 200] Proposed Development

A. [§ 201] Development Concept

The proposed development to be negotiated hereunder (the “Development”) shall consist of a commercial Development with ground level parking. In general the Development shall provide for:

- Approximately 45,300 square feet of single-story leaseable retail;
- Approximately 271 parking spaces;
- On- and off-site improvements, to include but not be limited to sidewalks, curbs, and gutters, street lights, land and hardscape, benches, and bike racks; and
- A shopping center with a goal of having a drug store, grocery and restaurant.

B. [§ 202] Green Building Considerations

The Developer shall use commercially reasonable efforts to employ Green Building strategies in the Development such as:

- Thermally efficient roofs, walls and windows that reduce heating loads and enhance thermal comfort;
- Building shape and orientation, thermal mass and daylighting strategies that reduce cooling loads;
- Efficient HVAC systems and electrical lighting that capitalize on daylighting strategies;
- Water efficient supply and waste fixtures;
- Adaptable interior designs, providing visual access to the outdoors and access to daylight;
- Interior finishes and installation methods having lower VOC emissions;
- Landscaping strategies that require little or no irrigation, permit groundwater replenishment and provide on-site storm water management, and/or
- Pursue LEED certification.

III. [§ 300] Obligations

A. [§ 301] Obligations of Developer

During the Negotiation Period, the Developer shall use its good faith efforts to:

1. Provide a design concept mutually agreeable to the Developer and the Agency;
2. Submit, and revise as necessary, a refined Development Plan clearly showing building footprints, elevations, design theme, preliminary landscaping, signage and lighting, parking aisles, spaces and medians, vehicular and pedestrian access ways and exits, and other factors fully descriptive of the Development, all to scale;
3. Prepare and begin processing the environmental studies and land use entitlement applications necessary for the Development;
4. Provide detailed development costs, development pro-formas, a market study and other documents necessary for Agency review;
5. Deliver and submit to the Agency sufficient evidence that the Developer has the required equity and/or loan commitments, and letters of interest to complete the Development, provided however, that the Agency understands and acknowledges the proprietary nature of the information contained in the Developer's financial statements and agrees, to the extent permitted by law (including but not limited to the Public Records Act (Government Code Section 6250 et. seq.)), not to disclose said information contained therein to any person or entity other than representatives of the Agency or their consultants;
6. Identify funding responsibilities and sources for the Development;
7. Make reasonable oral and written progress reports, and submit to the Agency reports and analyses, advising the Agency on all matters related to the Development, including financial feasibility analyses, construction cost estimates, marketing studies and similar due diligence matters;
8. Disclose to the Agency the names of other developers, primary employee contacts, consultants, or representatives anticipated to be directly involved in the Development;
9. Make best efforts to solicit input from the community regarding the project; and

10. Make best efforts to have a grocery, drug store, and restaurant in the development.

B. [§ 302] Obligations of Agency

During the Negotiation Period, Agency shall use its good faith efforts to:

1. Negotiate exclusively through its staff, and contract exclusively, with Developer in connection with the redevelopment of the Site;
2. Review the Development plans and determine consistency with the General Plan, zoning and other relevant land use regulations on the proposed Site;
3. Provide the Developer with documents in Agency's possession that would assist the Developer with the due diligence activities described in this Agreement;
4. Review Developer's proposal and determine what amount, if any, of the requested Agency financial assistance and other assistance the Agency will be able to contribute to the Development;
5. Assist in the identification of existing deficiencies in the public infrastructure in the vicinity of the Site Area, the actual fiscal impacts of the Development on municipal services, and the financial and other assistance the Agency will provide to address the same;
6. Meet with and work with businesses within the Site in the Development pursuant to the Agency's Rules Governing Participation and Preferences by Property Owners and Business Occupants in the Commercial/Palm Redevelopment Project;
7. Identify the necessary steps that will be undertaken to process and cause the Site to accommodate the Development;
8. Respond on a timely basis to all submittals by the Developer made pursuant to Section 301 of this Agreement;
9. Work with Developer to establish a reasonable time schedule, within the Negotiating Period, for negotiation of a DDA and the completion of all necessary approvals and permits to implement the Development; and
10. Provide reasonable cooperative assistance to the Developer in preparation for and during any presentation before regulatory or advisory panels in connection with any applications for land use permits, design review, or General Plan and/or Zoning Ordinance amendments, which may be required. Such cooperation by

the Agency staff shall not in any way pre-commit the Agency to any decision or course of action relative to the proposed Development.

IV. [§ 400] Environmental

A. [§ 401] The Parties acknowledge that the Agency has not prepared an initial study to determine the environmental document that may be necessary under the California Environmental Quality Act ("CEQA") for the Development or the DDA.

B. [§ 402] The Agency shall prepare and distribute the invitation of consulting firms to submit their qualifications to prepare any necessary CEQA documents, which invitation shall be mutually agreed upon by the Agency and the Developer. The Agency shall select a consultant ("Environmental Consultant") who shall prepare any necessary CEQA documents ("Environmental Document") for the project. Any reference herein to an Environmental Document shall include any CEQA documents such as a negative declaration, mitigated negative declaration, or environmental impact report, if appropriate. Final selection of the Environmental Consultant shall be in the Agency's sole discretion. The Agency shall enter into an agreement for the preparation of any necessary environmental document with the Environmental Consultant.

C. [§ 403] The Developer shall be solely responsible for all of the Environmental Consultant's fees and all costs associated therewith. The Developer shall pay an Environmental Deposit to the Agency prior to the start of any work by the Environmental Consultants on the environmental analyses. The amount of the Environmental Deposit shall be decided by the Agency based upon contractual estimates submitted by the Environmental Consultant.

D. [§ 404] The Developer shall have the right to review the progress of the Environmental Consultant with respect to the preparation of the Environmental Document as more particularly described below. Upon completion of each stage of preparation of the Environmental Document, including the preparation of working papers, a proposed outline, first draft, and any revised drafts of the Environmental Document, the Environmental Consultant shall deliver a copy of each such work produced to the Developer. The Developer shall have the right to review each such work produced and provide feedback and input to the Environmental Consultant. Notwithstanding the foregoing, nothing herein shall relieve the Agency of the obligation to exercise its independent judgment in the preparation and adoption of the Environmental Document.

E. [§ 405] The Developer shall assist in processing all documents necessary to satisfy requirements of CEQA and the preparation of any Environmental Document and related studies and analyses.

V. [§ 500] Disposition and Development Agreement

A. [§ 501] The Parties acknowledge and agree that during the Negotiation Period, as such period may be extended pursuant to Section 102 above, the Parties shall use their respective good faith efforts to negotiate and enter into a DDA which shall include, but not be limited to, the following:

1. The design of the Development by the Developer, which design shall include site design, landscape, public space, architecture, circulation, and environmental mitigation of the Development and be subject to approval by the Agency;

2. The construction of the Development by the Developer in accordance with final plans and specifications to be provided by the Developer and approved by the Agency pursuant to a detailed schedule of performance by the Developer;

3. The maintenance of landscaping, buildings, and improvements in good condition and satisfactory state of repair;

4. The requirement that the Developer comply with all equal opportunity standards established by Federal, State, and local law;

5. The right of the Agency to inspect the Development from time to time to assure compliance with these provisions;

6. The financing and equity to be provided by Developer for the Development;

7. A schedule of performance for the relocation of persons and entities within the Site;

8. A schedule of performance for the remediation and demolition of the structures on the Site;

9. A schedule of performance for the Development of the Site;

10. A description of the tentative tenant mix that shall include the categories of tenants such as restaurants, neighborhood services, grocers, drugstores, etc;

11. The Developer's agreement and obligation to allow for and accommodate, to the maximum extent possible, the future implementation of the Palm Avenue Commercial Corridor Master Plan adjacent to the development; and

12. The Agency and the Developer will examine and explore the opportunity for future financial gain by the Agency from the project.

VI. [§ 600] Additional Agency Assistance

The Parties acknowledge and agree that the Agency shall not provide any further financial assistance to Developer or the Development under the DDA.

VII [§ 700] Need For DDA

The Parties acknowledge and agree that this Agreement is for the sole purpose of stating the intention of the Parties to negotiate and enter into a DDA. The Parties have not reached agreement on the matters described herein, and do not intend to be bound until a final written DDA is executed by both Parties. In the event both Parties do not execute the final, written DDA within the time provided in Section 102, this Agreement shall automatically terminate, and be of no further force or effect, unless the Agency, in its sole discretion, agrees in writing to an extension.

VIII. [§ 800] Retention of Discretion to Approve the Development

The Parties understand that the Agency is reserving the right to exercise its discretion as to all matters which it is, by law, entitled or required to exercise its discretion, including, but not limited to, the approval of a DDA, the approval of a final development and the approval of any and all plans, permits or any other acts or activities requiring the subsequent independent exercise of discretion by the City of Imperial Beach, the Agency, or any agency or department thereof.

IV. [§ 900] Approval of the Final Development as Contained in the DDA

The Parties understand that the Agency has the complete and unfettered discretion to reject the DDA. The loss of portions or all of the Negotiation Deposit expended consistent with the requirements of Section 103 hereof and all costs and expenses incurred by the Developer shall be absorbed entirely by the Developer.

X. [§ 1000] Review and Approval of all Discretionary Actions

Any DDA that may be negotiated is subject to approval at a public hearing by the Agency. The decision of the Agency regarding the DDA shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the Agency Board is required to make by law, including all necessary findings and determinations required under CEQA, state and local land use provisions, and the California Community Redevelopment Law. As to those matters neither anything herein, nor to be contained in the DDA shall obligate the Agency to exercise its discretion in any particular manner, and any exercise of discretion required by law, other

than abuse of discretion, shall not be deemed to constitute a breach of Agency duties under this Agreement.

XI. [§ 1100] No Pre-Commitment by the City or Agency

By its execution of this Agreement, the City of Imperial Beach and Agency are neither committing themselves, or agreeing to undertake any activity requiring the subsequent exercise of discretion by the City or Agency or any department thereof, including, but not limited to, the approval and execution of a DDA; or approval of any land use regulation governing the Site; the provision of financial assistance for the development of any public or private interest in real property; the authorization or obligation to use the City's or Agency's eminent domain authority; or any other such activity.

This Agreement does not constitute a disposition of property or exercise of control over property by the City or Agency and does not require a public hearing. The Agency execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the City and Agency as to any proposed DDA and all proceedings and decisions in connection therewith.

XII. [§ 1200] Assignment

The Developer, without prior written approval of the Agency, shall not assign this Agreement. The Agency agrees that, notwithstanding the foregoing, the Developer may assign without the Agency's prior written approval, but with thirty (30) days prior written notice to the Agency, its rights under this Agreement to a limited liability company, corporation, trust, or partnership of which the Developer owns the majority beneficial interest and has operational control.

XIII. [§ 1300] Real Estate Commissions

The Agency has not engaged a broker, agent, or finder in connection with this transaction. As such, the Agency will not be responsible for any claims by a broker, agent or finder, and the Developer agrees to defend, indemnify, and protect and hold the Agency harmless from any and all claims, including all defense costs and attorney's fees, by any broker, agent, or finder retained by the Developer.

XIV. [§ 1400] General Provisions

A. [§ 1401] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

B. [§ 1402] Acceptance of Service of Process

In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency, or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

C. [§ 1403] Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

D. [§ 1404] Specific Performance as Developer's Exclusive Remedy

Subject to the Developer's right to terminate this Agreement in accordance with the terms of Section 1405 below, Developer's exclusive remedy for an uncured Agency default under this Agreement is to institute an action for specific performance of the terms of this Agreement, including the return of the remaining balance of the Negotiation Deposit after subtracting any unpaid Agency Third Party Development Costs, and in no event shall the Developer have the right, and the Developer expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, or lost profits) from the Agency in the event of a default by the Agency under this Agreement or any action related to this Agreement.

E. [§ 1405] Termination Rights

(a) Notwithstanding the Negotiation Period hereinabove set forth, either Party may terminate this Agreement if the other Party has materially defaulted in its obligations herein set forth, and the terminating party has provided the defaulting party with written notification of such determination, and the defaulting party has refused to cure the same. The written notification shall set forth the nature of the actions required to cure such default if curable. The defaulting party shall have thirty (30) days from the date of the written notification to cure such default. If such default is not cured within the thirty (30) days, the termination shall be deemed effective. Each Party shall also have the right to terminate this Agreement in the event that the Parties reach an impasse in their negotiation of the DDA. The Developer shall also have the right to terminate this Agreement at any time if the Developer determines, in its sole discretion, that the Development is not feasible. The Agency shall have the right to terminate this

Agreement at any time if the Agency determines, in its sole discretion, that the Development is not feasible.

F. [§ 1406] Indemnity

Developer shall indemnify, protect, defend and hold harmless the City and Agency, and their officials, officers, employees, representatives, members, and agents (collectively, "Indemnified Parties") from and against any and all challenges to this Agreement, and any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from the negligent acts, errors, or omissions and willful misconduct with respect to the obligations of the Developer, its officers, employees, representatives, member and agents hereunder or the Site, excluding any such losses arising from the active negligence or willful misconduct of the Agency, the City or any of the Indemnified Parties. This indemnity obligation in connection with events occurring prior to the termination of this Agreement shall survive the termination of this Agreement.

G. [§ 1407] Notices, Demands and Communications Between the Parties

Formal notices, demands, and communications between Agency and Developer shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (iii) facsimile with a hard copy sent by United States mail; or (iv) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To Agency: Gary Brown, Executive Director
Imperial Beach Redevelopment Agency
825 Imperial Beach Blvd
Imperial Beach CA 91932
Tel: 619-423-0314
Fax: 619-628-1395

With copy to: James P. Lough, Agency Counsel
McDougal , Love, Eckis, Smith, Boehmer & Foley
460 North Magnolia
El Cajon, CA 92020
Tel: 619-440-4444
Fax: 619-440-4907

To Developer: Colton Sudberry, President
Sudberry Properties Inc.
5465 Morehouse Drive, Suite 260
San Diego, CA 92121

Tel: 858-546-3000 x 511
Fax: 858-546-3009

With copy to:

William J. Harris
Law Offices of William J. Harris
777 South Highway 101, Suite 123
Solana Beach, CA 92075
Tel: 858-350-0570 x20
Fax: 858-350-0577

Notices personally delivered, sent by fax with a confirmation by United States mail or delivered by document delivery service shall be deemed effective upon receipt. Notices sent solely by mail in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

H. [§ 1409] Nonliability Agency Officials and Employees

No member, official, employee, or contractor of the Agency shall be personally liable to the Developer in the event of any default or breach by Agency or for any amount, which may become due to Developer or on any obligations under the terms of the Agreement.

I. [§ 1410] Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The part and paragraph headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

J. [§ 1411] Entire Agreement, Waivers, and Amendments

This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

K. [§ 1412] Counterparts

This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

L. [§ 1413] Successors

This Agreement shall be binding upon and shall inure to the benefit of the permitted successors of each of the Parties hereto.

M. [§ 1414] Severability

In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

N. [§ 1415] Time is of the Essence

Time is of the essence for each of the Parties' obligations under this Agreement.

O. [§ 1416] Recitals

The recitals set forth above are incorporated herein by this reference.

P. [§ 1417] Confidentiality

Developer acknowledges and agrees that the Agency is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by the Developer to the Agency with respect to the Site, the Development or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that the Developer reasonably deems and identifies in writing as proprietary and confidential in nature, the Agency agrees to exercise its best efforts to keep such information confidential as allowed by law.

Q. [§1418] Attorneys' Fees

The prevailing Party in any action to enforce this Agreement shall be entitled to recover reasonable attorneys' fees and costs from the other Party or Parties (including fees and costs in any subsequent action or proceeding to enforce any judgment entered

pursuant to an action of this Agreement). The Superior Court of the County of San Diego shall be the site and have jurisdiction for the resolution of all such actions.

R. [§1419] Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Agency and the Developer have signed this Agreement on the respective dates set forth below.

Agency:

Developer:

IMPERIAL BEACH REDEVELOPMENT
AGENCY

SUDBERRY PROPERTIES, INC.

By:_____

By:_____

Dated: _____

Dated:_____

ATTEST:

By:_____

APPROVED AS TO FORM:

Agency Counsel

Dated:_____

EXHIBIT A
SITE MAP